

APPEAL NO. 020349
FILED MARCH 19, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 24, 2002. The hearing officer resolved the disputed issue by concluding that the appellant (claimant) did not have disability from August 7, 2001, through the date of the CCH resulting from an injury sustained on _____. The claimant appealed the determination, arguing that she proved by the preponderance of the medical evidence that she sustained disability. In its response, the respondent (carrier) argues that the determination was supported by sufficient evidence.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____. The claimant testified that her treating doctor, Dr. M, released her to work without restrictions on August 9, 2001, after viewing a videotape of the claimant which showed her lifting various items of differing size and weight, including a chair and furniture parts, and placing them in a trash can without any apparent discomfort and restricted movement. The claimant testified that she had received an injection in her right shoulder approximately a week prior to the date the video was taken and the injection provided her with temporary relief. A medical report dated September 5, 2001, from Dr. H reflects that he recommended arthroscopic surgery and decompression for the claimant's right shoulder. The claimant testified that Dr. M took her off work on September 12, 2001, because she was in pain and surgery was recommended by Dr. H.

The hearing officer's resolution of the disability issue turns on factual questions on which there was conflicting evidence. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). Nothing in our review of the record indicates that the hearing officer's disability determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **UNITED STATES FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**PAUL DAVID EDGE
6404 INTERNATIONAL PARKWAY, SUITE 1000
PLANO, TEXAS 75093.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Gary L. Kilgore
Appeals Judge